

ORDINANCE NO. 1199

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF WICKENBURG, ARIZONA, AMENDING THE TOWN OF WICKENBURG, ARIZONA, CODE CHAPTER 9 BUSINESS CODE, ARTICLE 9-1 BUSINESS LICENSE BY REPEALING SECTION 9-1-16 MOBILE SALES LICENSE REGULATIONS; BY ADDING NEW ARTICLE 9-4 MOBILE MERCHANTS RELATING TO THE REGULATION OF MOBILE MERCHANTS; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; SETTING FORTH REQUIREMENTS FOR ISSUANCE OF BUSINESS LICENSES; ESTABLISHING OPERATIONAL REQUIREMENTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING PENALTIES

WHEREAS, the town is authorized to enact and enforce regulations and zoning codes on mobile sales units or mobile merchants that are not otherwise prohibited by law;

WHEREAS, the town is authorized to regulate mobile food vendors pursuant to applicable law, including Arizona Revised Statutes Sections 9-485, 9-485.01, 9-485.02, and 36-1761;

WHEREAS, the town recognizes that mobile merchants create opportunities for economic development and can provide affordable, food and goods at a variety of locations and events;

WHEREAS, the town seeks to protect public health, safety and welfare through a reasonable regulatory program for mobile merchants that includes safety standards and parking regulations;

WHEREAS, with these regulations, the town ensures that mobile merchants comply with applicable law, including building, health, and sanitation codes, as applicable;

WHEREAS, the town seeks to minimize potential traffic safety threats by mobile merchants who may impede the free flow of traffic, distract vehicle operators from observing traffic regulations, obstruct the view of pedestrians and vehicle operators, and encourage pedestrians who wish to inquire about services to cross the street in an unsafe and illegal manner.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Wickenburg, Arizona, as follows:

Section I. In General.

The Code of the Town of Wickenburg, Arizona, Chapter 9 Business Code, Article 9-1 Business License is hereby amended by repealing Section 9-1-16 Mobile Sales Licenses Regulation.

The Code of the Town of Wickenburg, Arizona, Chapter 9 Business Code is hereby amended by adding a new Article 9-4, Mobile Merchants to read as follows:

Article 9-4 MOBILE MERCHANTS

- 9-4-1 Purpose
- 9-4-2 Definitions
- 9-4-3 Compliance with State Licensing Requirements
- 9-4-4 Licensing Requirements
- 9-4-5 Operational Requirements
- 9-4-6 Violations; Suspension; Revocation

Section 9-4-1 Purpose

This article is adopted to protect the health, safety and welfare of the town and its residents by enacting reasonable regulations for mobile merchants, their employees, agents, lessees or independent contractors by requiring compliance with minimum standards for safety and security.

Section 9-4-2 Definitions

The below words and phrases, wherever used in this article shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. "Applicant" means the person who applies for a business license pursuant to Article 9-1 and this article.
- B. "Controlling person" means a natural person who either (A) has a ten percent (10%) or greater interest in the ownership or earnings of the business, or (B) is any of the following:
 - 1. An officer, director, or any stockholder who owns ten per cent (10%) or more, of a corporation licensee/applicant;
 - 2. A general partner of a limited partnership licensee/applicant or partner of a non-limited partnership licensee/applicant;
 - 3. An officer, president, or secretary of a limited liability company/corporation licensee/applicant; or
 - 4. The sole proprietor of a sole proprietorship licensee/applicant.
- C. "Designated agent" means the person designated by the licensee/applicant to receive notices from the town pursuant to this article.
- D. "Legal parking space":
 - 1. Means an area designated for vehicle parking in the town right-of-way that may be paved or unpaved and may be delineated by road surface markings.
 - 2. Does not include a parking space in a parking lot on property owned by the town.
- E. "Licensee" means the person who applied for a business license and in whose name the business license was issued by the town.

- F. "Mobile food unit" means a food establishment that is licensed by this state, that is readily movable and that dispenses food or beverages for immediate service and consumption and other incidental retail items from any vehicle as defined in Arizona Revised Statutes Section 28-101.
- G. "Mobile merchant" means any person who owns, controls, manages or leases a mobile sales unit or contracts with a person to prepare foods and vend from, drive or operate a mobile sales unit.
- H. "Mobile merchant" means any person who sells any type of tangible personal property, including, but not limited to, food and drink, at or adjacent to the person's mobile sales unit in which such tangible personal property is carried. This definition shall not include any person working or acting for a person holding a mobile merchant permit issued in accordance with this section.
- I. "Mobile sales unit" means any vehicle used for carrying tangible personal property for sale at or adjacent to the vehicle in which such tangible personal property is carried.
- J. "Person" means an individual, partnership, corporation, association or any other entity of whatever kind or nature.
- K. "Right-of-way" means an area of land owned by the town and is used for street or highway purposes.
- L. "Semi-permanent structure" means equipment, or any dining area, including, but not limited to, tables, chairs, booths, bar stools, benches, and standup counters.

Section 9-4-3 Compliance with State Licensing Requirements

It shall be unlawful for any person to operate a mobile food unit or act as a mobile food vendor without having first obtained a valid license from the State of Arizona Department of Health Services pursuant to A.R.S. § 36-1761.

Section 9-4-4 Licensing Requirements

- A. It shall be unlawful for a person to operate a mobile sales unit at any location within the town without obtaining a business license in accordance with Article 9-1 and this article.
- B. Application Requirements; Procedure. In addition to the requirements of Article 9-1, an application shall include, but not be limited to, the following information:
 - 1. The names, addresses, and contact information for the applicant, including all controlling persons and designated agents;
 - 2. A general description of the goods to be sold by the mobile merchant;
 - 3. A description, license plate number and photograph of the mobile sales unit;
 - 4. A valid driver's license; and
 - 5. If the applicant is a mobile food vendor, copies of required certificate(s) from the health services department in Maricopa County.
- C. A new or renewal license shall be issued to an applicant pursuant to this article unless:
 - 1. The applicant fails to provide a completed application, the required application fee;
 - 2. The applicant fails to pay the applicable license fee for a new or renewal license when the application is approved;
 - 3. The applicant or a controlling person is currently in violation of this article or other Town Code requirement;

4. The application contains false or misleading information;
 5. The applicant has a current debt related to any open or closed account maintained or formerly maintained with the town;
 6. The applicant or controlling person failed to comply with any federal and state laws, regulations promulgated by the Arizona Department of Health Services or Maricopa County, or the Town Code; or
 7. Evidence was provided to the Town establishing that the applicant or controlling person, within the five-year period immediately preceding the submission of the application, was convicted of any of the following:
 - a. Felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, or any preparatory offenses of the aforementioned crimes;
 - b. Felony involving a fraudulent or dishonest act;
 - c. Felony involving the sale, manufacture or transportation of any dangerous drug as defined under A.R.S. § 13-3401, a "violent crime" under A.R.S. Title 13, Chapters 11, 12, 13 or a "sexual offense" under A.R.S. Title 13, Chapter 14, or for conduct in another jurisdiction which if carried out in Arizona would constitute an offense under one of the statutory provisions enumerated in this subsection; or
 - d. Misdemeanor involving moral turpitude.
- D. Timeframes for Issuance of Licenses.
1. Administrative timeframe: Unless the license has already been issued, within fifteen (15) days after receiving a license application under this article, the town shall determine whether the application is administratively complete, and notify the applicant as set forth in this article.
 2. Substantive timeframe: Within forty-five (45) days after the town notifies the applicant that the application is administratively complete, the town will complete its substantive review of the license application.
 3. Overall timeframe: Within ninety (90) days after receiving an application under this article, the town will grant or deny a license.
 4. An application is deemed withdrawn if, within thirty (30) days after the date of a request for additional information during the substantive timeframe, the applicant does not supply the requested information or provide justification for the delay. On receipt of justification, the town shall allow the applicant thirty (30) additional days to provide the requested information before deeming the application withdrawn.
 5. Except as otherwise provided, the timeframes in this section shall be extended and suspended as provided by state law.

Section 9-4-5

Operational Requirements

- A. It is unlawful for any person to operate a mobile sales unit that does not meet the requirements in this section.
- B. Fire Safety and Inspection. A mobile merchant must ensure that all mobile sales units comply with the version of the International Fire Code in effect at the time when the license is issued, state law, and the Town Code relating to fire and explosion safety standards.

- C. A mobile sales unit(s) shall be inspected by the town's Fire Department, or the mobile merchant shall provide evidence that the mobile sales unit passed a fire inspection by another city or town fire department in this state within the preceding twelve (12) months.
- D. Refuse, Trash and Litter Maintenance. A mobile sales unit shall:
 - 1. Provide a minimum of one fifteen (15) gallon trash receptacle within fifteen (15) feet of each individual mobile sales unit for customers and employees;
 - 2. Maintain an area around the mobile unit clear of litter, garbage, rubble and debris; and
 - 3. Transport the trash from the area of operation to an authorized waste disposal location.
- E. Noise Restrictions.
 - 1. Noise levels from mobile sales units shall not exceed the town's noise ordinance standards pursuant to Section 10-1-11.
- F. Security.
 - 1. The mobile sales unit and the surrounding vending area shall be maintained in a safe and clean manner at all times.
 - 2. A mobile sales unit shall have adequate lighting to ensure customer safety in the vending area. Lighting shall be directed downwards and away from rights-of-way and adjacent properties.
 - 3. The mobile sales unit and its customers shall not obstruct the movement of pedestrians or other vehicles using the sidewalk, street, alley, or other public right-of-way.
- G. Insurance.
 - 1. If the mobile sales unit operates an event sponsored by the town or operates on public property, including rights-of-way or property owned by the town, the mobile merchant shall obtain insurance naming the town as an additional insured in amounts as required by the town and in accordance with the requirements of A.R.S. Title 9, Chapter 4, Article 7.2.
 - 2. The insurance company issuing the policy shall be authorized to issue commercial liability policies in Arizona by the Arizona Department of Insurance.
 - 3. The policy shall designate by manufacturer's serial or identification number all mobile sales units for which coverage is granted.
 - 4. The policy shall insure the person named in the policy and any other person using the mobile merchant with the express or implied permission of the named insured against any liability arising out of the ownership, maintenance or use of the mobile sales unit in Arizona.
- H. Location.
 - 1. Residential Areas. A mobile merchant shall not operate in a public right-of-way in an area zoned for residential use or within two hundred fifty (250) feet of an area zoned for residential use, except:
 - a. A mobile merchant selling only ice cream may operate on public rights-of-way in areas zoned for residential use; or
 - b. Subject to applicable laws and the Town Code, a mobile merchant may operate on private property in a residential area if the mobile merchant obtains a separate agreement with the property owner to operate a mobile sales unit for a maximum of six (6) hours within a twenty-four (24) hour period on the private property.
 - 2. Town-Owned Property. A mobile merchant shall only operate in a legal parking space. If the mobile merchant desires to operate on town property other than a legal parking space in a right-of-way, the mobile merchant shall obtain from the town:

- a. A separate licensing for use, services contract, or similar agreement, which will be entered into at the town's sole discretion and applicable law; or
 - b. A special event permit or similar permission in accordance with the Town Code.
3. Private Property: A mobile merchant shall obtain written permission to use any private property where a mobile sales unit is operating and shall provide proof of such written permission on demand by the town.

Notwithstanding the permission of a person owning or having lawful control of private real property, a mobile sales unit shall not remain in one location on private property for longer than ninety-six (96) consecutive hours, unless the town grants permission for a permitted special event greater than four (4) days. "One location" within this subsection means a location within a parcel of land and includes movements from different parked positions within the same parcel.

- I. Parking. A mobile sales unit shall comply with this subsection and applicable law as it pertains to parking, unless parking is governed by a separate subsection in this article.
- 1. Except as provided in Section 9-4-5(H)(2), a mobile sales unit shall only operate in a legal parking space.
 - 2. A mobile sales unit, including any semi-permanent structure used or associated with the mobile sales unit, may use no more than one (1) legal parking space, unless the mobile merchant has a separate agreement with the town to use additional legal parking spaces or parking spaces on town property other than right-of-way.
 - 3. No mobile sales unit exceeding twenty-four (24) feet may park diagonally in a diagonal parking space or park in any manner that occupies more than one (1) diagonal parking space.
 - 4. No mobile sales unit shall operate with the serving window facing street traffic.
 - 5. A mobile sales unit shall abide by all parking regulations, including posted time limits. If there are no other time restrictions on the use of a legal parking space, a mobile sales unit shall not occupy a legal parking space for more than six (6) hours in a twenty-four (24) hour period. "Occupy" within this subsection means within one hundred (100) feet of the place in which the mobile sales unit was initially parked.
 - 6. A mobile sales unit shall not occupy a legal parking space with insufficient parking capacity as prescribed by the Wickenburg Zoning Code and applicable law, and includes occupying a legal parking space that reduces the number of available parking spaces surrounding the area which is required for the principal use or uses of the property associated with the parking spaces as set forth in A.R.S. Title 9, Chapter 4, Article 7.2.
 - 7. A mobile merchant shall not claim or attempt to establish any exclusive right to park at a particular street location, unless the parking space is part of a permitted event.
- J. Signs. A mobile merchant shall comply with the town sign code.

Section 9-4-6 Violations; Suspension; Revocation

- A. It is a violation of this article for any person to provide false information on any license application.

- B. It is a violation of this article for a person to operate a mobile sales unit that either fails to meet all the requirements in this article.
- C. It is a violation of this article for a mobile merchant to fail to display the license or other required documents, including proof of insurance or fire inspection, to a peace officer or town inspector on demand.
- D. The town shall give written notice of a violation to the licensee or designated agent that may result in the suspension or revocation of the license. The notice shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the license. The notice shall be served on the licensee or designated agent by either personal service or registered/certified mail. Service of the notice shall be deemed complete upon mailing to, or personal service on, the licensee or designated agent.
- E. The licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 9-1-15. If the licensee fails to comply with the requirements of this article by the date provided in the notice, the town may suspend or revoke the license as provided in this section.
- F. If a license is revoked pursuant to this section, the license and its controlling person(s) may not apply for a license under this article for a period of one (1) year from the date of revocation.

Section II. Repeal of Conflicting Ordinance.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

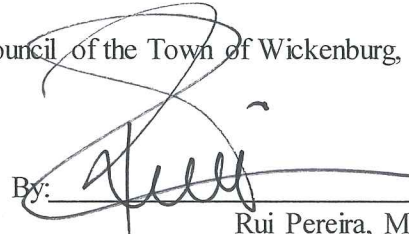
Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be subject to the violation and penalty provisions of Section 1-8 of the Wickenburg Town Code.

PASSED AND ADOPTED by the Town Council of the Town of Wickenburg, Arizona, this 3rd day of September, 2019.

By: 
Rui Pereira, Mayor

ATTEST:

By: Amy Brown
Amy Brown, Town Clerk

APPROVED AS TO FORM:

By: Susan Goodwin
Susan Goodwin, Gust Rosenfeld PLC
Town Attorneys

Number of Councilmembers Present: 6
Number of Votes For: 6
Number of Votes Against: 0
Number of Abstentions: 0

CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance Number 1199 was duly passed and adopted by the Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 3rd day of September, 2019, and that a quorum was present at the meeting.

Amy Brown
Amy Brown, Town Clerk